

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 106 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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KETAN ALIAS CHETAN JILUBHAI DABHI

Versus

COMMISSIONER OF POLICE  
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Appearance:

MR YOGESH S LAKHANI for Petitioner  
RULE SERVED for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/03/2000

ORAL JUDGEMENT

1. The Commissioner of Police Rajkot City, Rajkot, passed an order on August 4, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention Anti-Social Activities Act, 1985, detaining Ketan alias Chetan Jilubhai Dabhi of Rajkot under the provisions of the said

Act.

2. The detaining authority took into consideration three registered offences against the detenu under Bombay Prohibition Act. While considering less drastic remedies, the authority observed that proceedings under Section 57(c) of the Bombay Police Act, 1951 could have been resorted to and, for that purpose, minimum two convictions are required, which is not the case and, therefore, cannot be resorted to. After considering other less drastic remedies, the detaining authority came to conclusion that, in order to immediately prevent the petitioner from pursuing his bootlegging activities which are detrimental to public order, detention under the PASA Act is the only efficacious remedy that can be resorted to.

3. The petitioner/detenu has challenged the order of detention on various grounds. However, Mr. Gondalia, learned advocate appearing for Mr. Lakhani, learned advocate for the petitioner, has relied on the ground that the detaining authority has not properly considered the possibility of resorting to less drastic remedies. In this regard, he has drawn attention of this Court to paragraph 5 of the grounds of detention, where the detaining authority considered Section 57(c) of the Bombay Police Act and observed that minimum two convictions are required for resorting to proceedings under Section 57(c) of the Bombay Police Act. Mr. Gondalia submitted that, in the instant case, all the cases relied upon by the detaining authority are pending investigation and, secondly, the provision considered by the detaining authority requires three convictions and not two, as observed by the detaining authority. Therefore, the detaining authority has considered an irrelevant ground and has read the provision of law wrongly. Both these aspects reflect non-application of mind vitiating the detention order. The petition may, therefore, be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that the order is passed after considering merits and due application of mind.

5. It is apparent from grounds of detention that the detaining authority has considered possibility of resorting to proceedings under Section 57(c) of the Bombay Police Act, by way of less drastic remedy and observed that it is not possible to be resorted to as two convictions are required for proceeding under that

provision. This observation would reflect two things. The first is that the detaining authority while considering Section 57(c), has not applied mind to the requirement of Section 57(c), which requires minimum three convictions and not two, as observed in the grounds of detention. This would vitiate the order of detention.

5.1 Apart from this, the second aspect that emerges is that, there was no question of proceeding under Section 57(c) of the Bombay Police Act by the detaining authority, as the three cases relied upon by the detaining authority are at the stage of investigation and not even charge sheets are filed and, therefore, there is no conviction and, in absence of conviction, it would not become a relevant factor. The authority can be said to have taken into consideration an irrelevant factor while passing the order of detention.

5. Both the above lapses would vitiate the order of detention and would earn a success for the petitioner. Hence, the following order.

6. The petition is allowed. The impugned order of detention dated August 4, 1999 passed against the detenu is hereby quashed. The detenu-Ketan alias Chetan Jilubhai Dabhi is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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